

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING)
PHARMACY CASES LITIGATION)

THIS DOCUMENT RELATES TO:) MDL No. 2419

All Actions) Master Dkt.: 1:13-md-02419-RWZ

**MOTION FOR LEAVE TO FILE A BRIEF AS TO BELLWETHER AND DISCOVERY
PLAN ISSUES**

Saint Thomas West Hospital, formerly known as St. Thomas Hospital, Saint Thomas Network, and Saint Thomas Health (collectively referred to as the “Saint Thomas Entities”) and Ascension Health and Ascension Health Alliance (“Ascension Parties”) file this Motion for Leave to File a Brief as to Bellwether and Discovery Plan Issues, to show the Court as follows:

The Court has set a hearing on July 17, 2014, before Judge Boal on the *Saint Thomas Entities’ Motion to Stay Objections and Responses to Discovery Pending Submission of a Discovery Plan and Amended Protective Order* (Docket #595) (“Discovery Motion”) and the *Plaintiffs’ Steering Committee’s (“PSC”) Motion for Entry of a Bellwether Trial and Pre-Trial Scheduling Order* (Docket #837) (“Bellwether Motion”).¹

These motions are interrelated and were briefed over the course of several months beginning in fall of 2013. In addition to these motions, the following joinders, responses, replies, and other briefs relate to the issues raised by the Discovery and Bellwether Motions:

- Saint Thomas Entities’ Motion to Reconsider MDL Order No. 7 (Docket #457)
- Joinder in Saint Thomas Entities’ Motion to Reconsider MDL Order No. 7 filed by Saint Thomas Outpatient Neurosurgical Center, LLC, John Culclasure, M.D., Debra Schamberg, R.N., and Howell Allen Clinic, a Professional Corporation (Docket #459)

¹ E.g., Docket #1127.

- Plaintiff Steering Committee's Response to Saint Thomas Entities' Motion to Reconsider MDL Order No. 7 (Docket #478)
- Notice of Filing of Plaintiffs Steering Committee's Proposal on Saint Thomas Motion for Reconsideration (Docket #591)
- Saint Thomas' Entities' Response to Court's Directive in Further Support of Their Motion to Reconsider MDL Order No. 7 (Docket #592)
- Joinder in Saint Thomas Entities' Motion to Reconsider MDL Order No. 7 filed by Premier Orthopedic Associates, Premier Surgical Center, and Kimberly Yvette Smith-Martin, M.D. (Docket #615)
- Motion for Joinder in Saint Thomas's Motion for Protective Order and Saint Thomas's Motion to Stay Discovery, and Motion for entry of discovery plan (Docket #598) (joinder granted)
- PSC's Response to Motion re Motion for Joinder in Saint Thomas's Response to Motion for Reconsideration Motion for Case Management Orders, Motion For Protective Order (Second Amended), Motion to Stay Discovery filed by Plaintiffs' Steering Committee (Docket# 617)
- Order granting in part and denying in part Motion for Reconsideration of MDL Order No. 7 (Docket #731)
- Tennessee Clinic Defendants' Response to Plaintiffs' Steering Committee's Motion for Entry of Bellwether Trial and Pre-Trial Scheduling Order (filed by John Culclasure, Howell Allen Clinic, A Professional Corporation, Kenneth Lister, M.D., P.C., Kenneth R. Lister, Saint Thomas Outpatient Neurosurgical Center, LLC, Debra Schamberg, Specialty Surgery Center, PLLC) (Docket #858)
- Saint Thomas Entities' Notice of Status of Meet and Confer (Docket# 863)
- Saint Thomas Entities' Response to Plaintiffs' Steering Committee's Motion for Entry of Bellwether Trial and Pre-Trial Scheduling Order (Docket #964)
- UniFirst Opposition to Plaintiffs' Steering Committee's Motion for Entry of Bellwether Trial and Pre-Trial Scheduling Order (Docket #965)
- PSC Reply in Support of Bellwether Trial Plan and Pre-Trial Scheduling Order (Docket #987-1)

In addition, the bellwether issues were raised in other briefs that related to the Plaintiffs' Fact Sheets and authorizations. *See, e.g., Response to the Plaintiffs' Steering Committee's Memorandum of Law in Support of Proposals Plaintiff's Profile Form, Discovery Protocols, and Releases* (Docket #840).

Rather than having the Court review all of these briefs and decipher which portions are no longer timely or necessary to resolve, the Saint Thomas Entities and Ascension Parties propose that the Court grant these parties leave to file a single brief that incorporates the

outstanding issues and arguments relative to the two motions set for hearing on July 17. If leave is granted, these Defendants will submit a single brief of no more than twenty-five (25) pages.

The Saint Thomas Entities and Ascension Parties have conferred with counsel for the PSC, who does not object to their request for leave to file a supplemental brief, but does object to any brief that is more than five pages in length.

CONCLUSION AND PRAYER

According, the undersigned parties request that the Court grant the Saint Thomas Entities and Ascension Parties leave to file a single brief addressing the outstanding bellwether and discovery plan issues in advance of the hearing.

Respectfully submitted,

SAINT THOMAS WEST HOSPITAL,
FORMERLY KNOWN AS ST. THOMAS
HOSPITAL, SAINT THOMAS NETWORK,
SAINT THOMAS HEALTH, ASCENSION
HEALTH ALLIANCE AND ASCENSION
HEALTH

By its attorneys,

/s/ Sarah P. Kelly

Sarah P. Kelly (BBO #664267)
skelly@nutter.com
NUTTER McCLENNEN & FISH LLP
Seaport West
155 Seaport Boulevard
Boston, Massachusetts 02210
(617) 439-2000
(617) 310-9461 (FAX)

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OF COUNSEL:

Yvonne K. Puig*
Texas State Bar No. 16385400
yvonne.puig@nortonrosefulbright.com
Eric J. Hoffman*
Texas State Bar No. 24074427
eric.hoffman@nortonrosefulbright.com
FULBRIGHT & JAWORSKI L.L.P.
98 San Jacinto Blvd. Suite 1100
Austin, Texas 78701
(512) 536-2450
(512) 536-4598 (FAX)

Marcy Hogan Greer*
Texas State Bar No. 08417650
ALEXANDER DUBOSE JEFFERSON &
TOWNSEND LLP
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562
mgreer@adjtlaw.com
(512) 482-9300
(512) 482-9303 (FAX)

*Appearing *Pro Hac Vice*

CERTIFICATE OF SERVICE

This certifies that a true and accurate copy of the foregoing was served on all parties of record by virtue of the Court's electronic filing system this 18th day of June, 2014.

/s/ Sarah Kelly
SARAH KELLY